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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/059,929

01/29/2002

Tuan Bui

EIP-5807 (1417G P 678)

8386

29200 7590 06/06/2007  
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EXAMINER

COBANOGU, DILEK B

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

06/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/059,929

**Applicant(s)**

BUI ET AL.

**Examiner**

Dilek B. Cobanoglu

**Art Unit**

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-191 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-191 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
:08/24/2004,08/23/2004,05/30/2002,.

### **DETAILED ACTION**

1. This communication is in response to the Affidavit received on 03/26/2007.

Claims have not been amended. Claims 1-191 remain pending.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, 7-11, 14-24, 26-29, 32-34, 36-40, 41-44, 45-49, 51-55, 58-71, 73-77, 80-91, 93-103, 106-110, 113-118, 120-124, 126-137, 139-150, 152-154, 160-162, 164-170, 172-178, 180-187 and 189-191 are rejected under 35 U.S.C. 102(e) as being unpatentable by Greene et al. (hereinafter Greene) (U.S. Patent No. 7,051,120 B2).

A. Claims 1-5, 7-11, 14-24, 26-29, 32-34, 36-40, 41-44, 45-49, 51-55, 58-71, 73-77, 80-91, 93-103, 106-110, 113-118, 120-124, 126-137, 139-150, 152-154, 160-162, 164-170, 172-178, 180-187 and 189-191 have not been amended, and are rejected for the same reasons given in the previous Office action and incorporated herein. Applicant's arguments with respect to the aforementioned rejection are addressed below in the section entitled "Response to Arguments".

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 25, 50, 72 and 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greene et al. (hereinafter Greene) (U.S. Patent No. 7,051,120 B2) in view of de la Hueraga (U.S. Patent No. 5,960,085).

A. Claims 6, 25, 50, 72 and 119 have not been amended, and are rejected for the same reasons given in the previous Office action and incorporated herein.

Applicant's arguments with respect to the aforementioned rejection are addressed below in the section entitled "Response to Arguments".

6. Claims 12-13, 30-31, 56-57, 78-79, 92, 104, 105, 111-112, 125, 138, 151, 155-159, 163, 171, 179 and 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greene et al. (hereinafter Greene) (U.S. Patent No. 7,051,120 B2), de la Hueraga (U.S. patent No. 5,960,085) and further in view of Hochman (U.S. Patent Publication No. 2001/0049608 A1).

A. Claims 12-13, 30-31, 56-57, 78-79, 92, 104, 105, 111-112, 125, 138, 151, 155-159, 163, 171, 179 and 188 have not been amended, and are rejected for the same reasons given in the previous Office action and incorporated herein.

Applicant's arguments with respect to the aforementioned rejection are addressed below in the section entitled "Response to Arguments".

***Response to Arguments***

7. The Affidavit filed on 03/26/2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Greene reference.

A. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Greene reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Applicants show a chain of diligence but there is no evidence provided in this affidavit. An evidence can be a support of communication (e.g. e-mails , telephone and/or fax records). 715.07(a) states: Diligence: Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. Ex parte Hunter, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence. In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established, since diligence comes

into question only after prior conception is established. Ex parte Kantor, 177 USPQ 455 (Bd. App. 1958).

B. There are three inventors in the Oath when it's originally filed, we have received only two Affidavits for the two inventors, and we don't know which claims belong to the third inventor. Therefore Affidavit for the third inventor is missing.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dilek B. Cobanoglu whose telephone number is 571-272-8295. The examiner can normally be reached on 8-4:30.

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11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DBC

DBC

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05/17/2007

  
C. LUKE GILLIGAN  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600